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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 SOUTHERN DIVISION

JUAN PAGAN JR., an individual,  
 Plaintiff,

vs.

CITY OF FULLERTON, RENE  
 VALDES, an individual, JAIME  
 ARROYO, an individual,  
 GHARRETT WILTSE, an individual,  
 TRAVIS KOWALEC, an individual,  
 MATTHEW LEVIN, an individual,  
 SGT. DIAZ, an individual, CPL.  
 MURPHY, an individual, CPL.  
 CAZARES, an individual and DOES  
 1 through 10, inclusive,  
 Defendants.

Case No: 8:cv-23-02492 HDV-KES  
 Judge: Hon. Hernan D. Vera

**STIPULATED PROTECTIVE  
 ORDER**

1     **1.     A.     PURPOSES AND LIMITATIONS**

2             Discovery in this action is likely to involve production of confidential,  
3     proprietary, or private information for which special protection from public  
4     disclosure and from use for any purpose other than prosecuting this litigation may  
5     be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
6     enter the following Stipulated Protective Order. The parties acknowledge that this  
7     Order does not confer blanket protections on all disclosures or responses to  
8     discovery and that the protection it affords from public disclosure and use extends  
9     only to the limited information or items that are entitled to confidential treatment  
10    under the applicable legal principles. The parties further acknowledge, as set forth  
11    in Section 12.3, below, that this Stipulated Protective Order does not entitle them  
12    to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
13    procedures that must be followed and the standards that will be applied when a  
14    party seeks permission from the court to file material under seal.

15  
16             **B.     GOOD CAUSE STATEMENT**

17             The Parties represent that pre-trial discovery in this case is likely to include  
18    the production of information and/or documents that are confidential and/or  
19    privileged including the production of peace officer personnel file information  
20    and/or documents which the Parties agree includes: (1) Personal data, including  
21    marital status, family members, educational and employment history, home  
22    addresses, or similar information; (2) Medical history; (3) Election of employee  
23    benefits; (4) Employee advancement, appraisal, or discipline; and (5) Complaints,  
24    or investigations of complaints, concerning an event or transaction in which a  
25    peace officer participated, or which a peace officer perceived, and pertaining to the  
26    manner in which the peace officer performed his or her duties including compelled  
27    statements by peace officers unless specifically denoted as “not confidential”  
28    pursuant to Penal Code section 832.7. Defendants contend that such information is

1 privileged as official information. Sanchez v. City of Santa Ana, 936 F.2d 1027,  
2 1033 (9th Cir. Cal. 1990); see also Kerr v. United States Dist. Ct. for N.D. Cal.,  
3 511 F.2d 192, 198 (9th Cir.1975), aff'd, 426 U.S. 394, 96 S.Ct. 2119, 48 L.Ed.2d  
4 725 (1976). Further, discovery may require the production of certain Fullerton  
5 Police Department Policies and Procedures not available to the public and the  
6 public disclosure of which could comprise officer safety, raise security issues,  
7 and/or impede investigations. Peace officer personnel file information and/or  
8 documents and security-sensitive policies and procedures are hereinafter referred  
9 to as "Confidential Information".

10 Defendants contend that that public disclosure of such material poses a  
11 substantial risk of embarrassment, oppression and/or physical harm to peace  
12 officers whose Confidential Information is disclosed. The Parties further agree that  
13 the risk of harm to peace officers is greater than with other government employees  
14 due to the nature of their profession. Finally, the Defendants contend that the  
15 benefit of public disclosure of Confidential Information is minimal while the  
16 potential disadvantages are great.

17 Accordingly, good cause exists for entry of this Protective Order to facilitate  
18 pre-trial disclosure while assuring the safety of these sensitive disclosures. See  
19 Fed. R. Civ. Proc. 26(c).

## 20 21 **2. DEFINITIONS**

22 2.1 Action: This pending federal law suit.

23 2.2 Challenging Party: A Party or Non-Party that challenges the  
24 designation of information or items under this Order.

25 2.3 "CONFIDENTIAL" Information or Items: Information (regardless of  
26 how it is generated, stored or maintained) or tangible things that qualify for  
27 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
28 the Good Cause Statement.

1           2.4   Counsel: Outside Counsel of Record and House Counsel (as well as  
2 their support staff).

3           2.5   Designating Party: A Party or Non-Party that designates information  
4 or items that it produces in disclosures or in responses to discovery as  
5 “CONFIDENTIAL.”

6           2.6   Disclosure or Discovery Material: All items or information, regardless  
7 of the medium or manner in which it is generated, stored, or maintained (including,  
8 among other things, testimony, transcripts, and tangible things), that are produced  
9 or generated in disclosures or responses to discovery in this matter.

10          2.7   Expert: A person with specialized knowledge or experience in a  
11 matter pertinent to the litigation who has been retained by a Party or its counsel to  
12 serve as an expert witness or as a consultant in this Action.

13          2.8   House Counsel: Attorneys who are employees of a party to this  
14 Action. House Counsel does not include Outside Counsel of Record or any other  
15 outside counsel.

16          2.9   Non-Party: Any natural person, partnership, corporation, association,  
17 or other legal entity not named as a Party to this action.

18          2.10   Outside Counsel of Record: Attorneys who are not employees of a  
19 party to this Action but are retained to represent or advise a party to this Action  
20 and have appeared in this Action on behalf of that party or are affiliated with a law  
21 firm which has appeared on behalf of that party, and includes support staff.

22          2.11   Party: Any party to this Action, including all of its officers, directors,  
23 employees, consultants, retained experts, and Outside Counsel of Record (and their  
24 support staffs).

25          2.12   Producing Party: A Party or Non-Party that produces Disclosure or  
26 Discovery Material in this Action.

27          2.13   Professional Vendors: Persons or entities that provide litigation  
28 support services (e.g., photocopying, videotaping, translating, preparing exhibits or

1 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
2 and their employees and subcontractors.

3 2.14 Protected Material: Any Disclosure or Discovery Material that is  
4 designated as “CONFIDENTIAL.”

5 2.15 Receiving Party: A Party that receives Disclosure or Discovery  
6 Material from a Producing Party.

7  
8 **3. SCOPE**

9 The protections conferred by this Stipulation and Order cover not only  
10 Protected Material (as defined above), but also (1) any information copied or  
11 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
12 compilations of Protected Material; and (3) any testimony, conversations, or  
13 presentations by Parties or their Counsel that might reveal Protected Material. Any  
14 use of Protected Material at trial shall be governed by the orders of the trial judge.  
15 This Order does not govern the use of Protected Material at trial.

16  
17 **4. DURATION**

18 Even after final disposition of this litigation, the confidentiality obligations  
19 imposed by this Order shall remain in effect until a Designating Party agrees  
20 otherwise in writing or a court order otherwise directs. Final disposition shall be  
21 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
22 with or without prejudice; and (2) final judgment herein after the completion and  
23 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
24 including the time limits for filing any motions or applications for extension of  
25 time pursuant to applicable law.

1     **5. DESIGNATING PROTECTED MATERIAL**

2         5.1     Exercise of Restraint and Care in Designating Material for Protection.

3         Each Party or Non-Party that designates information or items for protection  
4     under this Order must take care to limit any such designation to specific material  
5     that qualifies under the appropriate standards. The Designating Party must  
6     designate for protection only those parts of material, documents, items, or oral or  
7     written communications that qualify so that other portions of the material,  
8     documents, items, or communications for which protection is not warranted are not  
9     swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or  
10    routinized designations are prohibited. Designations that are shown to be clearly  
11    unjustified or that have been made for an improper purpose (e.g., to unnecessarily  
12    encumber the case development process or to impose unnecessary expenses and  
13    burdens on other parties) may expose the Designating Party to sanctions. If it  
14    comes to a Designating Party's attention that information or items that it  
15    designated for protection do not qualify for protection, that Designating Party must  
16    promptly notify all other Parties that it is withdrawing the inapplicable designation.

17         5.2     Manner and Timing of Designations.

18         Except as otherwise provided in this Order (see, e.g., second paragraph of  
19    section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
20    Discovery Material that qualifies for protection under this Order must be clearly so  
21    designated before the material is disclosed or produced. Designation in conformity  
22    with this Order requires: (a) for information in documentary form (e.g., paper or  
23    electronic documents, but excluding transcripts of depositions or other pretrial or  
24    trial proceedings), that the Producing Party affix at a minimum, the legend  
25    "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
26    contains protected material. If only a portion or portions of the material on a page  
27    qualifies for protection, the Producing Party also must clearly identify the  
28    protected portion(s) (e.g., by making appropriate markings in the margins). A Party

1 or Non-Party that makes original documents available for inspection need not  
2 designate them for protection until after the inspecting Party has indicated which  
3 documents it would like copied and produced. During the inspection and before the  
4 designation, all of the material made available for inspection shall be deemed  
5 “CONFIDENTIAL.” After the inspecting Party has identified the documents it  
6 wants copied and produced, the Producing Party must determine which documents,  
7 or portions thereof, qualify for protection under this Order. Then, before producing  
8 the specified documents, the Producing Party must affix the “CONFIDENTIAL  
9 legend” to each page that contains Protected Material. If only a portion or portions  
10 of the material on a page qualifies for protection, the Producing Party also must  
11 clearly identify the protected portion(s) (e.g., by making appropriate markings in  
12 the margins). (b) for testimony given in depositions that the Designating Party  
13 identify the Disclosure or Discovery Material on the record, before the close of the  
14 deposition all protected testimony. (c) for information produced in some form  
15 other than documentary and for any other tangible items, that the Producing Party  
16 affix in a prominent place on the exterior of the container or containers in which  
17 the information is stored the legend “CONFIDENTIAL.” If only a portion or  
18 portions of the information warrants protection, the Producing Party, to the extent  
19 practicable, shall identify the protected portion(s).

20 5.3 Inadvertent Failures to Designate.

21 If timely corrected, an inadvertent failure to designate qualified information  
22 or items does not, standing alone, waive the Designating Party’s right to secure  
23 protection under this Order for such material. Upon timely correction of a  
24 designation, the Receiving Party must make reasonable efforts to assure that the  
25 material is treated in accordance with the provisions of this Order.  
26  
27  
28

1     **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2         **6.1 Timing of Challenges.**

3             Any Party or Non-Party may challenge a designation of confidentiality at  
4 any time that is consistent with the Court's Scheduling Order.

5         **6.2 Meet and Confer.**

6             The Challenging Party shall initiate the dispute resolution process under  
7 Local Rule 37.1 et seq. or follow the procedures for informal, telephonic  
8 discovery hearings on the Court's website.

9         **6.3**     The burden of persuasion in any such challenge proceeding shall be  
10 on the Designating Party. Frivolous challenges, and those made for an improper  
11 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
12 parties) may expose the Challenging Party to sanctions. Unless the Designating  
13 Party has waived or withdrawn the confidentiality designation, all parties shall  
14 continue to afford the material in question the level of protection to which it is  
15 entitled under the Producing Party's designation until the Court rules on the  
16 challenge.

17  
18     **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

19         **7.1 Basic Principles.**

20             A Receiving Party may use Protected Material that is disclosed or produced  
21 by another Party or by a Non-Party in connection with this Action only for  
22 prosecuting, defending, or attempting to settle this Action. Such Protected Material  
23 may be disclosed only to the categories of persons and under the conditions  
24 described in this Order. When the Action has been terminated, a Receiving Party  
25 must comply with the provisions of section 13 below (FINAL DISPOSITION).  
26 Protected Material must be stored and maintained by a Receiving Party at a  
27 location and in a secure manner that ensures that access is limited to the persons  
28 authorized under this Order.



1           7.2    Disclosure of “CONFIDENTIAL” Information or Items.

2           Unless otherwise ordered by the court or permitted in writing by the  
3 Designating Party, a Receiving Party may disclose any information or item  
4 designated “CONFIDENTIAL” only to:

5                   (a) the Receiving Party’s Outside Counsel of Record in this Action, as  
6 well as employees of said Outside Counsel of Record to whom it is reasonably  
7 necessary to disclose the information for this Action;

8                   (b) the officers, directors, and employees (including House Counsel)  
9 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

10                  (c) Experts (as defined in this Order) of the Receiving Party to whom  
11 disclosure is reasonably necessary for this Action and who have signed the  
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13                  (d) the court and its personnel;

14                  (e) court reporters and their staff;

15                  (f) professional jury or trial consultants, mock jurors, and Professional  
16 Vendors to whom disclosure is reasonably necessary for this Action and who have  
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18                  (g) the author or recipient of a document containing the information or  
19 a custodian or other person who otherwise possessed or knew the information;

20                  (h) during their depositions, witnesses ,and attorneys for witnesses, in  
21 the Action to whom disclosure is reasonably necessary provided: (1) the deposing  
22 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)  
23 they will not be permitted to keep any confidential information unless they sign the  
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
25 agreed by the Designating Party or ordered by the court. Pages of transcribed  
26 deposition testimony or exhibits to depositions that reveal Protected Material may  
27 be separately bound by the court reporter and may not be disclosed to anyone  
28 except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-

1 Party in this Action and designated as “CONFIDENTIAL.” Such information  
2 produced by Non-Parties in connection with this litigation is protected by the  
3 remedies and relief provided by this Order. Nothing in these provisions should be  
4 construed as prohibiting a Non-Party from seeking additional protections.

5 (b) In the event that a Party is required, by a valid discovery request, to  
6 produce a Non-Party’s confidential information in its possession, and the Party is  
7 subject to an agreement with the Non-Party not to produce the Non-Party’s  
8 confidential information, then the Party shall:

9 (1) promptly notify in writing the Requesting Party and the Non-  
10 Party that some or all of the information requested is subject to a confidentiality  
11 agreement with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the Stipulated  
13 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
14 specific description of the information requested; and

15 (3) make the information requested available for inspection by the  
16 Non-Party, if requested.

17 (c) If the Non-Party fails to seek a protective order from this court within  
18 14 days of receiving the notice and accompanying information, the Receiving  
19 Party may produce the Non-Party’s confidential information responsive to the  
20 discovery request. If the Non-Party timely seeks a protective order, the Receiving  
21 Party shall not produce any information in its possession or control that is subject  
22 to the confidentiality agreement with the Non-Party before a determination by the  
23 court. Absent a court order to the contrary, the Non-Party shall bear the burden  
24 and expense of seeking protection in this court of its Protected Material.

25  
26 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has  
28 disclosed Protected Material to any person or in any circumstance not authorized

1 under this Stipulated Protective Order, the Receiving Party must immediately (a)  
2 notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
3 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform  
4 the person or persons to whom unauthorized disclosures were made of all the terms  
5 of this Order, and (d) request such person or persons to execute the  
6 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
7 A.

8  
9 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
10 **OTHERWISE PROTECTED MATERIAL**

11 When a Producing Party gives notice to Receiving Parties that certain  
12 inadvertently produced material is subject to a claim of privilege or other  
13 protection, the obligations of the Receiving Parties are those set forth in Federal  
14 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
15 whatever procedure may be established in an e-discovery order that provides for  
16 production without prior privilege review. Pursuant to Federal Rule of Evidence  
17 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
18 of a communication or information covered by the attorney-client privilege or  
19 work product protection, the parties may incorporate their agreement in the  
20 stipulated protective order submitted to the court.

21  
22 **12. MISCELLANEOUS**

23 **12.1 Right to Further Relief.**

24 Nothing in this Order abridges the right of any person to seek its  
25 modification by the Court in the future.

26 **12.2 Right to Assert Other Objections.**

27 By stipulating to the entry of this Protective Order no Party waives any right  
28 it otherwise would have to object to disclosing or producing any information or

1 item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
2 Party waives any right to object on any ground to use in evidence of any of the  
3 material covered by this Protective Order.

#### 4 12.3 Filing Protected Material.

5 A Party that seeks to file under seal any Protected Material must comply  
6 with Civil Local Rule 79-5. Protected Material may only be filed under seal  
7 pursuant to a court order authorizing the sealing of the specific Protected Material  
8 at issue. If a Party's request to file Protected Material under seal is denied by the  
9 court, then the Receiving Party may file the information in the public record  
10 unless otherwise instructed by the court.

### 11 13. FINAL DISPOSITION

12 After the final disposition of this Action, as defined in paragraph 4, within  
13 60 days of a written request by the Designating Party, each Receiving Party must  
14 return all Protected Material to the Producing Party or destroy such material. As  
15 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
16 compilations, summaries, and any other format reproducing or capturing any of the  
17 Protected Material. Whether the Protected Material is returned or destroyed, the  
18 Receiving Party must submit a written certification to the Producing Party (and, if  
19 not the same person or entity, to the Designating Party) by the 60 day deadline that  
20 (1) identifies (by category, where appropriate) all the Protected Material that was  
21 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
22 copies, abstracts, compilations, summaries or any other format reproducing or  
23 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
24 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
25 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
26 and trial exhibits, expert reports, attorney work product, and consultant and expert  
27 work product, even if such materials contain Protected Material. Any such archival  
28

1 copies that contain or constitute Protected Material remain subject to this  
2 Protective Order as set forth in Section 4 (DURATION).

3  
4 14. Any violation of this Order may be punished by any and all appropriate  
5 measures including, without limitation, contempt proceedings and/or monetary  
6 sanctions.

7  
8 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD**

9  
10  
11 DATED: March 29, 2024

/s/ Denise Lynch Rocawich  
JAMES R. TOUCHSTONE  
DENISE LYNCH ROCAWICH  
Attorneys for City of Fullerton, Rene  
Valdes, Jaime Arroyo, Gharrett Wiltse,  
Travis Kowalec, Matthew Levin, Sgt. Diaz,  
Cpl. Murphy, and Cpl. Cazares

12  
13  
14  
15  
16 DATED: March 29, 2024

/s/ Matthew T. Falkenstein  
MARK J. SKAPIK  
GERALYN L. SKAPIK  
BLAIR J. BERKLEY  
MATTHEW T. FALKENSTEIN  
Attorneys for Plaintiff Juan Pagan  
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17  
18  
19  
20  
21  
22 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

23  
24  
25 DATED: April 1, 2024

Karen E. Scott  
HONORABLE KAREN E. SCOTT  
United States Magistrate Judge

**EXHIBIT A**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
 have read in its entirety and understand the Stipulated Protective Order that was  
 issue by the United States District Court for the Central District of California on  
 \_\_\_\_\_ [Date] in the case of *Juan Pagan v. City of Fullerton et al.*, Case  
 No. CV 23-02492 HDV-KES. I agree to comply with and to be bound by all the  
 terms of this Stipulated Protective Order and I understand and acknowledge that  
 failure to so comply could expose me to sanctions and punishment in the nature of  
 contempt. I solemnly promise that I will not disclose in any manner any  
 information or item that is subject to this Stipulated Protective Order to any person  
 or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District  
 Court for the Central District of California for the purpose of enforcing the terms  
 of this Stipulated Protective Order, even if such enforcement proceedings occur  
 after termination of this action. I hereby appoint \_\_\_\_\_ [print  
 or type full name] of \_\_\_\_\_ [print or type full address and  
 telephone number] as my California agent for service of process in connection with  
 this action or any proceedings related to enforcement of this Stipulated Protective  
 Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_